

AMENDED IN SENATE APRIL 22, 2013

SENATE BILL

No. 648

Introduced by Senator Corbett

February 22, 2013

An act to ~~amend Section 1947.5 of the Civil Code,~~ to amend Section 48901 of the Education Code, to amend Sections 7596, 7597, and 19994.35 of the Government Code, to amend Sections ~~1234, 1286,~~ 1596.795, 104495, 110995, 113978, and 114332.3 of, and to add Section 118882 to, the Health and Safety Code, to amend Section 6404.5 of the Labor Code, to amend Sections 561 and 99580 of the Public Utilities Code, and to amend Section 12523 of the Vehicle Code, relating to electronic cigarettes.

LEGISLATIVE COUNSEL'S DIGEST

SB 648, as amended, Corbett. Electronic cigarettes: restriction of use and advertising.

Existing law defines an electronic cigarette as a device that can provide an inhalable dose of nicotine by delivering an inhalable solution. Existing law, to the extent not preempted by federal law, makes it unlawful for a person to sell or otherwise furnish an electronic cigarette to a person under 18 years of age.

Existing law restricts or prohibits the smoking of tobacco products in various places, including, but not limited to, ~~residential dwelling units,~~ school campuses, public buildings, as defined, places of employment, day care facilities, retail food facilities, and health facilities. Under existing law, violation of the prohibition against smoking in certain of these places, including, but not limited to, a day care facility, ~~health facility, or clinic~~ constitutes ~~an infraction or a misdemeanor,~~ as specified.

This bill would extend the above-referenced restrictions and prohibitions against the smoking of tobacco products to include electronic cigarettes. By including electronic cigarettes within the restricted and prohibited activity, this bill would change the definition of a crime with respect to certain facilities, thereby creating a state-mandated local program.

Existing law prohibits the advertising of tobacco products in any state-owned and state-occupied building, except as specified.

This bill would extend the above prohibition against advertising to electronic cigarettes, as defined.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in enacting this
2 act to regulate the use of electronic cigarettes, as defined in
3 subdivision (b) of Section 110405 of the Health and Safety Code,
4 to the same extent and in the same manner as cigarettes and other
5 tobacco products, to the extent not preempted by federal law.

6 ~~SEC. 2. Section 1947.5 of the Civil Code is amended to read:~~

7 ~~1947.5. (a) A landlord of a residential dwelling unit, as defined~~
8 ~~in Section 1940, or his or her agent, may prohibit the smoking of~~
9 ~~a cigarette, as defined in Section 104556 of the Health and Safety~~
10 ~~Code, an electronic cigarette, as defined in subdivision (b) of~~
11 ~~Section 119405 of the Health and Safety Code, or other tobacco~~
12 ~~product on the property or in any building or portion of the~~
13 ~~building, including any dwelling unit, other interior or exterior~~
14 ~~area, or the premises on which it is located, in accordance with~~
15 ~~this article.~~

16 ~~(b) (1) Every lease or rental agreement entered into on or after~~
17 ~~January 1, 2012, for a residential dwelling unit on property on any~~
18 ~~portion of which the landlord has prohibited the smoking of~~
19 ~~cigarettes, electronic cigarettes, or other tobacco products pursuant~~
20 ~~to this article shall include a provision that specifies the areas on~~

1 the property where smoking is prohibited, if the lessee has not
2 previously occupied the dwelling unit.

3 (2) ~~For a lease or rental agreement entered into before January~~
4 ~~1, 2012, a prohibition against the smoking of cigarettes, electronic~~
5 ~~cigarettes, or other tobacco products in any portion of the property~~
6 ~~in which smoking was previously permitted shall constitute a~~
7 ~~change of the terms of tenancy, requiring adequate notice in~~
8 ~~writing, to be provided in the manner prescribed in Section 827.~~

9 (c) ~~A landlord who exercises the authority provided in~~
10 ~~subdivision (a) to prohibit smoking shall be subject to federal,~~
11 ~~state, and local requirements governing changes to the terms of a~~
12 ~~lease or rental agreement for tenants with leases or rental~~
13 ~~agreements that are in existence at the time that the policy limiting~~
14 ~~or prohibiting smoking is adopted.~~

15 (d) ~~This section shall not be construed to preempt any local~~
16 ~~ordinance in effect on or before January 1, 2012, or any provision~~
17 ~~of a local ordinance in effect on or after January 1, 2012, that~~
18 ~~restricts the smoking of cigarettes, electronic cigarettes, or other~~
19 ~~tobacco products.~~

20 (e) ~~A limitation or prohibition of the use of any tobacco product~~
21 ~~or electronic cigarette shall not affect any other term or condition~~
22 ~~of the tenancy, nor shall this section be construed to require~~
23 ~~statutory authority to establish or enforce any other lawful term~~
24 ~~or condition of the tenancy.~~

25 ~~SEC. 3.~~

26 *SEC. 2.* Section 48901 of the Education Code is amended to
27 read:

28 48901. (a) No school shall permit the smoking or use of
29 tobacco, or any product containing tobacco or nicotine products,
30 including electronic cigarettes, by pupils of the school while the
31 pupils are on campus, or while attending school-sponsored
32 activities or while under the supervision and control of school
33 district employees.

34 (b) The governing board of any school district maintaining a
35 high school shall take all steps it deems practical to discourage
36 high school students from smoking.

37 ~~SEC. 4.~~

38 *SEC. 3.* Section 7596 of the Government Code is amended to
39 read:

1 7596. As used in this chapter, the following terms have the
2 following meanings:

3 (a) “Public building” means a building owned and occupied, or
4 leased and occupied, by the state, a county, a city, a city and
5 county, or a California community college district.

6 (1) “Inside a public building” includes all indoor areas of the
7 building, except for covered parking lots and residential space.
8 “Inside a public building” also includes any indoor space leased
9 to the state, county, or city, except for covered parking lots and
10 residential space.

11 (2) “Residential space” means a private living area, but it does
12 not include common areas such as lobbies, lounges, waiting areas,
13 elevators, stairwells, and restrooms that are a structural part of a
14 multicomplex building such as a dormitory.

15 (3) (A) “Covered parking lot” means an area designated for the
16 parking of vehicles that is enclosed or contains a roof or ceiling.
17 “Covered parking lot” does not include lobbies, lounges, waiting
18 areas, elevators, stairwells, and restrooms that are a structural part
19 of the parking lot or a building to which it is attached.

20 (B) The application of this subparagraph shall not supersede or
21 render inapplicable permitted smoking of tobacco products,
22 including electronic cigarettes, under this chapter within any other
23 part of a covered parking lot not specifically listed in subparagraph
24 (1).

25 (b) “State” or “state agency” means a state agency, as defined
26 pursuant to Section 11000, the Legislature, the Supreme Court and
27 the courts of appeal, and each campus of the California State
28 University and the University of California.

29 (c) “Public employee” means an employee of a state agency or
30 an employee of a county or city.

31 ~~SEC. 5.~~

32 SEC. 4. Section 7597 of the Government Code is amended to
33 read:

34 7597. (a) No public employee or member of the public shall
35 smoke any tobacco product, including an electronic cigarette,
36 inside a public building, or in an outdoor area within 20 feet of a
37 main exit, entrance, or operable window of a public building, or
38 in a passenger vehicle, as defined by Section 465 of the Vehicle
39 Code, owned by the state.

(b) This section shall not preempt the authority of any county, city, city and county, California Community College campus, campus of the California State University, or campus of the University of California to adopt and enforce additional smoking and tobacco control ordinances, regulations, or policies that are more restrictive than the applicable standards required by this chapter.

~~SEC. 6.~~

SEC. 5. Section 19994.35 of the Government Code is amended to read:

19994.35. (a) No tobacco product advertising, which shall include electronic cigarette advertising, shall be allowed in any state-owned and state-occupied building excepting advertising contained in a program, leaflet, newspaper, magazine, or other written material lawfully sold, brought, or distributed within a state building.

(b) “Advertise,” for purposes of this section, means the display of any poster, sign, or other written or visual material that is intended to communicate commercial information or images to the public.

(c) “Tobacco product,” for purposes of this section, means any product containing tobacco, the prepared leaves of plants of the nicotiana family, including, but not limited to, cigarettes, loose tobacco, cigars, snuff, chewing tobacco, or any other preparation of tobacco.

~~SEC. 7. Section 1234 of the Health and Safety Code is amended to read:~~

~~1234. (a) Smoking shall not be permitted in patient areas of a clinic except those rooms designated for occupancy exclusively by smokers.~~

~~(b) Clearly legible signs shall either:~~

~~(1) State that smoking is unlawful and be conspicuously posted by, or on behalf of, the owner or manager of such clinic, in all areas of a clinic where smoking is unlawful.~~

~~(2) Identify “smoking permitted” areas, and be posted by, or on behalf of, the owner or manager of such clinic, only in areas of a clinic where smoking is lawfully permitted.~~

~~If “smoking permitted” signs are posted, there shall also be conspicuously posted, near all major entrances, clearly legible~~

1 signs stating that smoking is unlawful except in areas designated
2 “smoking permitted.”

3 (e) ~~This section shall not apply to skilled nursing facilities,~~
4 ~~intermediate care facilities, and intermediate care facilities for the~~
5 ~~developmentally disabled.~~

6 (d) ~~This section applies to the use of electronic cigarettes, as~~
7 ~~defined in subdivision (b) of Section 119405.~~

8 SEC. 8. ~~Section 1286 of the Health and Safety Code is amended~~
9 ~~to read:~~

10 1286. (a) ~~Smoking shall be prohibited in patient care areas,~~
11 ~~waiting rooms, and visiting rooms of a health facility, except those~~
12 ~~areas specifically designated as smoking areas, and in patient rooms~~
13 ~~as specified in subdivision (b).~~

14 (b) ~~Smoking shall not be permitted in a patient room unless all~~
15 ~~persons assigned to such room have requested a room where~~
16 ~~smoking is permitted. In the event that the health facility occupancy~~
17 ~~has reached capacity, the health facility shall have reasonable time~~
18 ~~to reassign patients to appropriate rooms.~~

19 (c) ~~Clearly legible signs shall either:~~

20 (1) ~~State that smoking is unlawful and be conspicuously posted~~
21 ~~by, or on behalf of, the owner or manager of such health facility,~~
22 ~~in all areas of a health facility where smoking is unlawful.~~

23 (2) ~~Identify “smoking permitted” areas, and be posted by, or~~
24 ~~on behalf of, the owner or manager of such health facility, only in~~
25 ~~areas of the health facility where smoking is lawfully permitted.~~

26 If “smoking permitted” signs are posted, there shall also be
27 conspicuously posted, near all major entrances, clearly legible
28 signs stating that smoking is unlawful except in areas designated
29 “smoking permitted.”

30 (d) ~~No signs pertaining to smoking are required to be posted~~
31 ~~in patient rooms.~~

32 (e) ~~This section shall not apply to skilled nursing facilities,~~
33 ~~intermediate care facilities, and intermediate care facilities for the~~
34 ~~developmentally disabled.~~

35 (f) ~~This section applies to the use of electronic cigarettes, as~~
36 ~~defined in subdivision (b) of Section 119405.~~

37 SEC. 9.

38 SEC. 6. Section 1596.795 of the Health and Safety Code is
39 amended to read:

1 1596.795. (a) The smoking of tobacco, including electronic
2 cigarettes, as defined in subdivision (b) of Section 119405, in a
3 private residence that is licensed as a family day care home shall
4 be prohibited during the hours of operation as a family day care
5 home and in those areas of the family day care home where
6 children are present. Nothing in this section shall prohibit a city
7 or county from enacting or enforcing an ordinance relating to
8 smoking in a family day care home if the ordinance is more
9 stringent than this section.

10 (b) The smoking of tobacco, including electronic cigarettes, as
11 defined in subdivision (b) of Section 119405, on the premises of
12 a licensed day care center shall be prohibited.

13 ~~SEC. 10.~~

14 *SEC. 7.* Section 104495 of the Health and Safety Code is
15 amended to read:

16 104495. (a) For the purposes of this section, the following
17 definitions shall govern:

18 (1) "Playground" means any park or recreational area
19 specifically designed to be used by children that has play equipment
20 installed, or any similar facility located on public or private school
21 grounds, or on city, county, or state park grounds.

22 (2) "Tot lot sandbox area" means a designated play area within
23 a public park for the use by children under five years of age. Where
24 the area is not contained by a fence, the boundary of a tot lot
25 sandbox area shall be defined by the edge of the resilient surface
26 of safety material, such as concrete or wood, or any other material
27 surrounding the tot lot sandbox area.

28 (3) "Public park" includes a park operated by a public agency.

29 (4) "Smoke or smoking" means the carrying of a lighted pipe,
30 lighted cigar, or lighted cigarette of any kind, including an
31 electronic cigarette, as defined in subdivision (b) of Section
32 119405, or the lighting of a pipe, cigar, or cigarette of any kind,
33 including, but not limited to, tobacco, or any other weed or plant.

34 (5) "Cigarette" means the same as defined in Section 104556,
35 and also includes an electronic cigarette.

36 (6) "Cigar" means the same as defined in Section 104550.

37 (b) No person shall smoke a cigarette, cigar, or other
38 tobacco-related product within 25 feet of any playground or tot
39 lot sandbox area.

1 (c) No person shall dispose of cigarette butts, cigar butts, or any
2 other tobacco-related waste within 25 feet of a playground or a tot
3 lot sandbox area.

4 (d) No person shall intimidate, threaten any reprisal, or effect
5 any reprisal, for the purpose of retaliating against another person
6 who seeks to attain compliance with this section.

7 (e) Any person who violates this section is guilty of an infraction
8 and shall be punished by a fine of two hundred fifty dollars (\$250)
9 for each violation of this section. Punishment under this section
10 shall not preclude punishment pursuant to Section 13002, Section
11 374.4 of the Penal Code, or any other provision of law proscribing
12 the act of littering.

13 (f) The prohibitions contained in subdivisions (b), (c), and (d)
14 shall not apply to private property.

15 (g) The prohibitions contained in subdivisions (b) and (c) shall
16 not apply to a public sidewalk located within 25 feet of a
17 playground or a tot lot sandbox area.

18 (h) This section shall not preempt the authority of any county,
19 city, or city and county to regulate smoking around playgrounds
20 or tot lot sandbox areas. Any county, city, or city and county may
21 enforce any ordinance adopted prior to January 1, 2002, or may
22 adopt and enforce new regulations that are more restrictive than
23 this section, on and after January 1, 2002.

24 ~~SEC. 11.~~

25 *SEC. 8.* Section 110995 of the Health and Safety Code is
26 amended to read:

27 110995. Any person or entity who manufactures, transports,
28 stores, or sells ice shall comply with all of the following:

29 (a) A room in which ice is manufactured shall be used for no
30 other purpose than the manufacture of ice and the production of
31 refrigeration, and may contain refrigeration equipment and
32 machinery. This subdivision shall not apply to any food facility
33 as defined in Section 113785.

34 (b) Ice storage or processing areas shall be maintained in a clean
35 and sanitary condition and no noxious or offensive odors, smoking,
36 including electronic cigarettes, as defined in subdivision (b) of
37 Section 119405, or other air pollution shall be permitted therein.

38 (c) Cover tops for tank cans shall have a smooth, painted, or
39 treated surface, and shall be cleaned daily. Water used for cleaning
40 shall not be permitted to drip into freezing cans. Only potable water

1 shall be used in sprays and in the thaw tanks for the removal of
2 ice from cans. Water coverage tanks shall be covered and provided
3 with filtered vents.

4 (d) Crushed, cubed, or shaved ice, intended for human
5 consumption, shall be stored in a manner that prevents its pollution
6 or contamination.

7 (e) Soil, waste, or drain pipes shall not be installed or maintained
8 above any ice platform, loading space, ice container, ice storage
9 room, dip tank or any place where leakage from the pipes may
10 drop into, or upon any ice or upon any area or equipment used in
11 the manufacture of ice, unless a safety device shall be installed
12 under the pipes drained to an open receptacle or drain so as to
13 prevent pollution of ice, water, or equipment used in the
14 manufacture of the ice.

15 (f) Block ice-loading platforms shall be washed with water as
16 often as necessary to keep them in a clean and sanitary condition,
17 but not less than once each day.

18 (g) Block ice pullers and block ice storage-room employees
19 shall wear rubber overshoes while on duty. The rubber overshoes
20 shall be removed when the employee leaves the storage or tank
21 room, except that if the rubber overshoes are not removed, they
22 shall be cleaned and disinfected before reentering the storage or
23 tank room. The use of street shoes without rubber overshoes in
24 these areas is prohibited.

25 (h) All frozen unpackaged ice blocks intended for sale for human
26 consumption or for the refrigeration of food products shall be
27 washed thoroughly with potable water. Ice manufactured for
28 industrial purposes need not be washed prior to shipping but shall
29 be handled and stored separately from ice intended for human
30 consumption.

31 (i) Ice shall be handled only with clean tongs, ice-carrying bags,
32 scoops, or other sanitary containers, and shall not be directly
33 handled with bare hands.

34 (j) Single service supplies shall be stored, dispensed, and
35 handled in a sanitary manner and shall be used only once.

36 (k) Persons not directly involved in the manufacture, processing,
37 packaging, or storing of ice, in the maintenance of facilities and
38 equipment used therefore, or in the management, supervision, or
39 inspection thereof, shall not be permitted in any area where ice is
40 manufactured, processed, packaged, or stored, unless personal

1 cleanliness and hygienic practices are taken to prevent
2 contamination of the product. These areas shall have signs posted
3 to this effect.

4 (l) Bacteriological tests of the finished ice shall be conducted
5 not less than biannually, chemical and physical tests annually, and
6 radiological tests every four years, to ~~insure~~ ensure that ice
7 manufactured for human consumption or for the refrigeration of
8 food products complies with the primary drinking water standards
9 adopted by the department pursuant to Section 116365.

10 (m) No ice produced out of state shall be sold or distributed
11 within this state unless it complies with this article.

12 ~~SEC. 12.~~

13 SEC. 9. Section 113978 of the Health and Safety Code is
14 amended to read:

15 113978. Food facilities shall have a “no smoking” sign posted
16 in the food preparation, food storage, and warewashing areas. For
17 purposes of this section, “smoking” also includes use of electronic
18 cigarettes, as defined in subdivision (b) of Section 119405.

19 ~~SEC. 13.~~

20 SEC. 10. Section 114332.3 of the Health and Safety Code is
21 amended to read:

22 114332.3. (a) No potentially hazardous food or beverage stored
23 or prepared in a private home may be offered for sale, sold, or
24 given away from a nonprofit charitable temporary food facility.
25 Potentially hazardous food shall be prepared in a food
26 establishment or on the premises of a nonprofit charitable
27 temporary food facility.

28 (b) All food and beverage shall be protected at all times from
29 unnecessary handling and shall be stored, displayed, and served
30 so as to be protected from contamination.

31 (c) Potentially hazardous food and beverage shall be maintained
32 at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or
33 above 57.2 degrees Celsius (135 degrees Fahrenheit) at all times.

34 (d) Ice used in beverages shall be protected from contamination
35 and shall be maintained separate from ice used for refrigeration
36 purposes.

37 (e) All food and food containers shall be stored off the floor on
38 shelving or pallets located within the facility.

1 (f) Smoking, including electronic cigarettes, as defined in
2 subdivision (b) of Section 119405, is prohibited in nonprofit
3 charitable temporary food facilities.

4 (g) (1) Except as provided in paragraph (2), live animals, birds,
5 or fowl shall not be kept or allowed in nonprofit charitable
6 temporary food facilities.

7 (2) Paragraph (1) does not prohibit the presence, in any room
8 where food is served to the public, guests, or patrons, of a guide
9 dog, signal dog, or service dog, as defined by Section 54.1 of the
10 Civil Code, accompanied by a totally or partially blind person,
11 deaf person, person whose hearing is impaired, or handicapped
12 person, or dogs accompanied by persons licensed to train guide
13 dogs for the blind pursuant to Chapter 9.5 (commencing with
14 Section 7200) of Division 3 of the Business and Professions Code.

15 (3) Paragraph (1) does not apply to dogs under the control of
16 uniformed law enforcement officers or of uniformed employees
17 of private patrol operators and operators of a private patrol service
18 who are licensed pursuant to Chapter 11.5 (commencing with
19 Section 7580) of Division 3 of the Business and Professions Code,
20 while these employees are acting within the course and scope of
21 their employment as private patrol persons.

22 (4) The persons and operators described in paragraphs (2) and
23 (3) are liable for any damage done to the premises or facilities by
24 the dog.

25 (5) The dogs described in paragraphs (2) and (3) shall be
26 excluded from food preparation and utensil wash areas. Aquariums
27 and aviaries shall be allowed if enclosed so as not to create a public
28 health problem.

29 (h) All garbage shall be disposed of in a sanitary manner.

30 (i) Employees preparing or handling food shall wear clean
31 clothing and shall keep their hands clean at all times.

32 ~~SEC. 14.~~

33 *SEC. 11.* Section 118882 is added to the Health and Safety
34 Code, to read:

35 118882. The Legislature finds and declares that the use of
36 electronic cigarettes, as defined in subdivision (b) of Section
37 119405, is a hazard to the health of the general public. Any
38 reference in this chapter to, or any prohibition of, the smoking of
39 tobacco shall also be construed to refer to the use of electronic
40 cigarettes.

1 ~~SEC. 15.~~

2 *SEC. 12.* Section 6404.5 of the Labor Code is amended to read:

3 6404.5. (a) The Legislature finds and declares that regulation
4 of smoking in the workplace is a matter of statewide interest and
5 concern. It is the intent of the Legislature in enacting this section
6 to prohibit the smoking of tobacco products, including electronic
7 cigarettes, as defined in subdivision (b) of Section 119405 of the
8 Health and Safety Code, in all enclosed places of employment in
9 this state, as covered by this section, thereby eliminating the need
10 of local governments to enact workplace smoking restrictions
11 within their respective jurisdictions. It is further the intent of the
12 Legislature to create a uniform statewide standard to restrict and
13 prohibit the smoking of tobacco products, including electronic
14 cigarettes, in enclosed places of employment, as specified in this
15 section, in order to reduce employee exposure to environmental
16 tobacco smoke to a level that will prevent anything other than
17 insignificantly harmful effects to exposed employees, and also to
18 eliminate the confusion and hardship that can result from enactment
19 or enforcement of disparate local workplace smoking restrictions.
20 Notwithstanding any other provision of this section, it is the intent
21 of the Legislature that any area not defined as a “place of
22 employment” pursuant to subdivision (d) or in which the smoking
23 of tobacco products, including electronic cigarettes, is not regulated
24 pursuant to subdivision (e) shall be subject to local regulation of
25 smoking of tobacco products, including electronic cigarettes.

26 (b) No employer shall knowingly or intentionally permit, and
27 no person shall engage in, the smoking of tobacco products in an
28 enclosed space at a place of employment. “Enclosed space”
29 includes lobbies, lounges, waiting areas, elevators, stairwells, and
30 restrooms that are a structural part of the building and not
31 specifically defined in subdivision (d). For purposes of this section,
32 “smoking,” or smoking of tobacco products includes use of
33 electronic cigarettes, as specified in subdivision (b) of Section
34 119405.

35 (c) For purposes of this section, an employer who permits any
36 nonemployee access to his or her place of employment on a regular
37 basis has not acted knowingly or intentionally in violation of this
38 section if he or she has taken the following reasonable steps to
39 prevent smoking by a nonemployee:

40 (1) Posted clear and prominent signs, as follows:

1 (A) ~~Where~~*If* smoking is prohibited throughout the building or
2 structure, a sign stating “No smoking” shall be posted at each
3 entrance to the building or structure.

4 (B) ~~Where~~*If* smoking is permitted in designated areas of the
5 building or structure, a sign stating “Smoking is prohibited except
6 in designated areas” shall be posted at each entrance to the building
7 or structure.

8 (2) Has requested, when appropriate, that a nonemployee who
9 is smoking refrain from smoking in the enclosed workplace.

10 For purposes of this subdivision, “reasonable steps” does not
11 include (A) the physical ejection of a nonemployee from the place
12 of employment or (B) any requirement for making a request to a
13 nonemployee to refrain from smoking, under circumstances
14 involving a risk of physical harm to the employer or any employee.

15 (d) For purposes of this section, “place of employment” does
16 not include any of the following:

17 (1) Sixty-five percent of the guestroom accommodations in a
18 hotel, motel, or similar transient lodging establishment.

19 (2) Areas of the lobby in a hotel, motel, or other similar transient
20 lodging establishment designated for smoking by the establishment.
21 An establishment may permit smoking in a designated lobby area
22 that does not exceed 25 percent of the total floor area of the lobby
23 or, if the total area of the lobby is 2,000 square feet or less, that
24 does not exceed 50 percent of the total floor area of the lobby. For
25 purposes of this paragraph, “lobby” means the common public
26 area of an establishment in which registration and other similar or
27 related transactions, or both, are conducted and in which the
28 establishment’s guests and members of the public typically
29 congregate.

30 (3) Meeting and banquet rooms in a hotel, motel, other transient
31 lodging establishment similar to a hotel or motel, restaurant, or
32 public convention center, except while food or beverage functions
33 are taking place, including setup, service, and cleanup activities,
34 or when the room is being used for exhibit purposes. At times
35 when smoking is not permitted in a meeting or banquet room
36 pursuant to this paragraph, the establishment may permit smoking
37 in corridors and prefunction areas adjacent to and serving the
38 meeting or banquet room if no employee is stationed in that
39 corridor or area on other than a passing basis.

(4) Retail or wholesale tobacco shops and private smokers' lounges. For purposes of this paragraph:

(A) "Private smokers' lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, electronic cigarettes, cigars, and pipes.

(B) "Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, electronic cigarettes, cigars, pipe tobacco, and smoking accessories.

(5) Cabs of motortrucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if no nonsmoking employees are present.

(6) Warehouse facilities. For purposes of this paragraph, "warehouse facility" means a warehouse facility with more than 100,000 square feet of total floorspace, and 20 or fewer full-time employees working at the facility, but does not include any area within a facility that is utilized as office space.

(7) Gaming clubs, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "gaming club" means any gaming club, as defined in Section 19802 of the Business and Professions Code, or bingo facility, as defined in Section 326.5 of the Penal Code, that restricts access to minors under 18 years of age.

(8) Bars and taverns, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. "Bar or tavern" includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, "bar" or "tavern" includes only those areas used primarily for the sale and service of alcoholic beverages. "Bar" or "tavern" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

(9) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.

(10) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.

1 (11) Private residences, except for private residences licensed
2 as family day care homes, during the hours of operation as family
3 day care homes and in those areas where children are present.

4 (12) Patient smoking areas in long-term health care facilities,
5 as defined in Section 1418 of the Health and Safety Code.

6 (13) Breakrooms designated by employers for smoking, provided
7 that all of the following conditions are met:

8 (A) Air from the smoking room shall be exhausted directly to
9 the outside by an exhaust fan. Air from the smoking room shall
10 not be recirculated to other parts of the building.

11 (B) The employer shall comply with any ventilation standard
12 or other standard utilizing appropriate technology, including, but
13 not limited to, mechanical, electronic, and biotechnical systems,
14 adopted by the Occupational Safety and Health Standards Board
15 or the federal Environmental Protection Agency. If both adopt
16 inconsistent standards, the ventilation standards of the Occupational
17 Safety and Health Standards Board shall be no less stringent than
18 the standards adopted by the federal Environmental Protection
19 Agency.

20 (C) The smoking room shall be located in a nonwork area where
21 no one, as part of his or her work responsibilities, is required to
22 enter. For purposes of this subparagraph, “work responsibilities”
23 does not include any custodial or maintenance work carried out in
24 the breakroom when it is unoccupied.

25 (D) There are sufficient nonsmoking breakrooms to
26 accommodate nonsmokers.

27 (14) Employers with a total of five or fewer employees, either
28 full time or part time, may permit smoking where all of the
29 following conditions are met:

30 (A) The smoking area is not accessible to minors.

31 (B) All employees who enter the smoking area consent to permit
32 smoking. No one, as part of his or her work responsibilities, shall
33 be required to work in an area where smoking is permitted. An
34 employer who is determined by the division to have used coercion
35 to obtain consent or who has required an employee to work in the
36 smoking area shall be subject to the penalty provisions of Section
37 6427.

38 (C) Air from the smoking area shall be exhausted directly to
39 the outside by an exhaust fan. Air from the smoking area shall not
40 be recirculated to other parts of the building.

(D) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

This paragraph shall not be construed to (i) supersede or render inapplicable any condition or limitation on smoking areas made applicable to specific types of business establishments by any other paragraph of this subdivision or (ii) apply in lieu of any otherwise applicable paragraph of this subdivision that has become inoperative.

(e) Paragraphs (13) and (14) of subdivision (d) shall not be construed to require employers to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.

(f) (1) Except as otherwise provided in this subdivision, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), until the earlier of the following:

(A) January 1, 1998.

(B) The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency establishing a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons.

(2) If a regulation specified in subparagraph (B) of paragraph (1) is adopted on or before January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall

1 prohibit smoking in the gaming club, bar, or tavern until
2 compliance or conformity is achieved. If the Occupational Safety
3 and Health Standards Board and the federal Environmental
4 Protection Agency both adopt regulations specified in subparagraph
5 (B) of paragraph (1) that are inconsistent, the regulations of the
6 Occupational Safety and Health Standards Board shall be no less
7 stringent than the regulations of the federal Environmental
8 Protection Agency.

9 (3) If a regulation specified in subparagraph (B) of paragraph
10 (1) is not adopted on or before January 1, 1998, the exemptions
11 specified in paragraphs (7) and (8) of subdivision (d) shall become
12 inoperative on and after January 1, 1998, until a regulation is
13 adopted. Upon adoption of such a regulation on or after January
14 1, 1998, smoking may thereafter be permitted in gaming clubs and
15 in bars and taverns, subject to full compliance with, or conformity
16 to, the standard in the regulation within two years following the
17 date of adoption of the regulation. An employer failing to achieve
18 compliance with, or conformity to, the regulation within this
19 two-year period shall prohibit smoking in the gaming club, bar,
20 or tavern until compliance or conformity is achieved. If the
21 Occupational Safety and Health Standards Board and the federal
22 Environmental Protection Agency both adopt regulations specified
23 in subparagraph (B) of paragraph (1) that are inconsistent, the
24 regulations of the Occupational Safety and Health Standards Board
25 shall be no less stringent than the regulations of the federal
26 Environmental Protection Agency.

27 (4) From January 1, 1997, to December 31, 1997, inclusive,
28 smoking may be permitted in gaming clubs, as defined in paragraph
29 (7) of subdivision (d), and in bars and taverns, as defined in
30 paragraph (8) of subdivision (d), subject to both of the following
31 conditions:

32 (A) If practicable, the gaming club or bar or tavern shall
33 establish a designated nonsmoking area.

34 (B) If feasible, no employee shall be required, in the
35 performance of ordinary work responsibilities, to enter any area
36 in which smoking is permitted.

37 (g) The smoking prohibition set forth in this section shall
38 constitute a uniform statewide standard for regulating the smoking
39 of tobacco products in enclosed places of employment and shall
40 supersede and render unnecessary the local enactment or

1 enforcement of local ordinances regulating the smoking of tobacco
2 products in enclosed places of employment. Insofar as the smoking
3 prohibition set forth in this section is applicable to all places of
4 employment within this state and, therefore, provides the maximum
5 degree of coverage, the practical effect of this section is to
6 eliminate the need of local governments to enact enclosed
7 workplace smoking restrictions within their respective jurisdictions.

8 (h) Nothing in this section shall prohibit an employer from
9 prohibiting smoking in an enclosed place of employment for any
10 reason.

11 (i) The enactment of local regulation of smoking of tobacco
12 products in enclosed places of employment by local governments
13 shall be suspended only for as long as, and to the extent that, the
14 smoking prohibition provided for in this section remains in effect.
15 In the event this section is repealed or modified by subsequent
16 legislative or judicial action so that the ~~(100-percent)~~ smoking
17 prohibition is no longer applicable to all enclosed places of
18 employment in California, local governments shall have the full
19 right and authority to enforce previously enacted, and to enact and
20 enforce new, restrictions on the smoking of tobacco products in
21 enclosed places of employment within their jurisdictions, including
22 a complete prohibition of smoking. Notwithstanding any other
23 provision of this section, any area not defined as a “place of
24 employment” or in which smoking is not regulated pursuant to
25 subdivision (d) or (e), shall be subject to local regulation of
26 smoking of tobacco products.

27 (j) Any violation of the prohibition set forth in subdivision (b)
28 is an infraction, punishable by a fine not to exceed one hundred
29 dollars (\$100) for a first violation, two hundred dollars (\$200) for
30 a second violation within one year, and five hundred dollars (\$500)
31 for a third and for each subsequent violation within one year. This
32 subdivision shall be enforced by local law enforcement agencies,
33 including, but not limited to, local health departments, as
34 determined by the local governing body.

35 (k) Notwithstanding Section 6309, the division shall not be
36 required to respond to any complaint regarding the smoking of
37 tobacco products, in an enclosed space at a place of employment,
38 unless the employer has been found guilty pursuant to subdivision
39 (j) of a third violation of subdivision (b) within the previous year.

1 (l) If any provision of this act or the application thereof to any
2 person or circumstances is held invalid, that invalidity shall not
3 affect other provisions or applications of the act that can be given
4 effect without the invalid provision or application, and to this end
5 the provisions of this act are severable.

6 ~~SEC. 16.~~

7 *SEC. 13.* Section 561 of the Public Utilities Code is amended
8 to read:

9 561. (a) Every railroad corporation, passenger stage
10 corporation, passenger air carrier, and street railroad corporation
11 providing departures originating in this state shall prohibit the
12 smoking of any tobacco product, including an electronic cigarette,
13 in the passenger seating area of every passenger car, passenger
14 stage, aircraft, or other vehicle.

15 (b) Every such corporation and carrier shall display in the
16 passenger seating area of every passenger car, passenger stage,
17 aircraft, or other vehicle, notices sufficient in number, posted in
18 such locations as to be readily seen by boarding passengers,
19 advising passengers of the no smoking requirements pursuant to
20 subdivision (a). Words on such notices which state “No Smoking”
21 or an equivalent phrase shall be at least three-quarters of one inch
22 high, and any other explanatory words on the notices shall be at
23 least one-quarter of an inch high.

24 (c) No person shall smoke any tobacco product, including an
25 electronic cigarette, in a space known by him or her to be
26 designated for nonsmoking passengers. A violation of this
27 subdivision is not a crime.

28 (d) As used in this section, “passenger air carrier” shall have
29 the same meaning as provided in Sections 2741 and 2743.

30 ~~SEC. 17.~~

31 *SEC. 14.* Section 99580 of the Public Utilities Code, as
32 amended by Section 2.5 of Chapter 750 of the Statutes of 2012, is
33 amended to read:

34 99580. (a) Pursuant to subdivision (e) of Section 640 of the
35 Penal Code, a public transportation agency may enact and enforce
36 an ordinance to impose and enforce an administrative penalty for
37 any of the acts described in subdivision (b). The ordinance shall
38 include the provisions of this chapter and shall not apply to minors.

39 (b) (1) Evasion of the payment of a fare of the system.

(2) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare.

(3) Playing sound equipment on or in a system facility or vehicle.

(4) Smoking, including electronic cigarettes, eating, or drinking in or on a system facility or vehicle in those areas where those activities are prohibited by that system.

(5) Expectorating upon a system facility or vehicle.

(6) Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior.

(7) Carrying an explosive or acid, flammable liquid, or toxic or hazardous material in a system facility or vehicle.

(8) Urinating or defecating in a system facility or vehicle, except in a lavatory. However, this paragraph shall not apply to a person who cannot comply with this paragraph as a result of a disability, age, or a medical condition.

(9) (A) Willfully blocking the free movement of another person in a system facility or vehicle.

(B) This paragraph shall not be interpreted to affect any lawful activities permitted or first amendment rights protected under the laws of this state or applicable federal law, including, but not limited to, laws related to collective bargaining, labor relations, or labor disputes.

(10) Skateboarding, roller skating, bicycle riding, or roller blading in a system facility, including a parking structure, or in a system vehicle. This paragraph does not apply to an activity that is necessary for utilization of a system facility by a bicyclist, including, but not limited to, an activity that is necessary for parking a bicycle or transporting a bicycle aboard a system vehicle, if that activity is conducted with the permission of the agency of the system in a manner that does not interfere with the safety of the bicyclist or other patrons of the system facility.

(11) (A) Unauthorized use of a discount ticket or failure to present, upon request from a system representative, acceptable proof of eligibility to use a discount ticket, in accordance with Section 99155, and posted system identification policies when entering or exiting a system station or vehicle. Acceptable proof of eligibility must be clearly defined in the posting.

(B) In the event that an eligible discount ticket user is not in possession of acceptable proof at the time of request, an issued

1 notice of fare evasion or passenger conduct violation shall be held
2 for a period of 72 hours to allow the user to produce acceptable
3 proof. If the proof is provided, that notice shall be voided. If the
4 proof is not produced within that time period, that notice shall be
5 processed.

6 (12) Sale or peddling of any goods, merchandise, property, or
7 services of any kind whatsoever on the facilities, vehicles, or
8 property of the public transportation system without the express
9 written consent of the public transportation system or its duly
10 authorized representatives.

11 (c) (1) The public transportation agency may contract with a
12 private vendor or governmental agency for the processing of notices
13 of fare evasion or passenger conduct violation, and notices of
14 delinquent fare evasion or passenger conduct violation pursuant
15 to Section 99581.

16 (2) For the purpose of this chapter, “processing agency” means
17 either of the following:

18 (A) The agency issuing the notice of fare evasion or passenger
19 conduct violation and the notice of delinquent fare evasion or
20 passenger conduct violation.

21 (B) The party responsible for processing the notice of fare
22 evasion or passenger conduct violation and the notice of delinquent
23 violation, if a contract is entered into pursuant to paragraph (1).

24 (3) For the purpose of this chapter, “fare evasion or passenger
25 conduct violation penalty” includes, but is not limited to, a late
26 payment penalty, administrative fee, fine, assessment, and costs
27 of collection as provided for in the ordinance.

28 (4) For the purpose of this chapter, “public transportation
29 agency” shall mean a public agency that provides public
30 transportation as defined in paragraph (1) of subdivision (f) of
31 Section 1 of Article XIX A of the California Constitution.

32 (5) All fare evasion and passenger conduct violation penalties
33 collected pursuant to this chapter shall be deposited in the general
34 fund of the county in which the citation is administered.

35 (d) (1) If a fare evasion or passenger conduct violation is
36 observed by a person authorized to enforce the ordinance, a notice
37 of fare evasion or passenger conduct violation shall be issued. The
38 notice shall set forth the violation, including reference to the
39 ordinance setting forth the administrative penalty, the date of the
40 violation, the approximate time, and the location where the

1 violation occurred. The notice shall include a printed statement
2 indicating the date payment is required to be made, and the
3 procedure for contesting the notice. The notice shall be served by
4 personal service upon the violator. The notice, or copy of the
5 notice, shall be considered a record kept in the ordinary course of
6 business of the issuing agency and the processing agency, and
7 shall be prima facie evidence of the facts contained in the notice
8 establishing a rebuttable presumption affecting the burden of
9 producing evidence.

10 (2) When a notice of fare evasion or passenger conduct violation
11 has been served, the person issuing the notice shall file the notice
12 with the processing agency.

13 (3) If, after a notice of fare evasion or passenger conduct
14 violation is issued pursuant to this section, the issuing officer
15 determines that there is incorrect data on the notice, including, but
16 not limited to, the date or time, the issuing officer may indicate in
17 writing on a form attached to the original notice the necessary
18 correction to allow for the timely entry of the corrected notice on
19 the processing agency's data system. A copy of the correction shall
20 be mailed to the address provided by the person cited at the time
21 the original notice of fare evasion or passenger conduct violation
22 was served.

23 (4) If a person contests a notice of fare evasion or passenger
24 conduct violation, the issuing agency shall proceed in accordance
25 with Section 99581.

26 (e) In setting the amounts of administrative penalties for the
27 violations listed in subdivision (b), the public transportation agency
28 shall not establish penalty amounts that exceed the maximum fine
29 amount set forth in Section 640 of the Penal Code.

30 (f) A person who receives a notice of fare evasion or passenger
31 conduct violation pursuant to this section shall not be subject to
32 citation for a violation of Section 640 of the Penal Code.

33 (g) If an entity enacts an ordinance pursuant to this section it
34 shall, both two years and five years after enactment of the
35 ordinance, report all of the following information to the Senate
36 Committee on Transportation and Housing and the Assembly
37 Committee on Transportation:

38 (1) A description of the ordinance, including the circumstances
39 under which an alleged violator is afforded the opportunity to
40 complete the administrative process.

1 (2) The amount of the administrative penalties.

2 (3) The number and types of citations administered pursuant to
3 the ordinance.

4 (4) To the extent available, a comparison of the number and
5 types of citations administered pursuant to the ordinance with the
6 number and types of citations issued for similar offenses and
7 administered through the courts both in the two years prior to the
8 ordinance and, if any, since enactment of the ordinance.

9 (5) A discussion of the effect of the ordinance on passenger
10 behavior.

11 (6) A discussion of the effect of the ordinance on revenues to
12 the entity described in subdivision (a) and, in consultation with
13 the superior courts, the cost savings to the county courts. The
14 superior courts are encouraged to collaborate on and provide data
15 for this report.

16 ~~SEC. 18.~~

17 *SEC. 15.* Section 12523 of the Vehicle Code is amended to
18 read:

19 12523. (a) No person shall operate a youth bus without having
20 in possession a valid driver's license of the appropriate class,
21 endorsed for passenger transportation and a certificate issued by
22 the department to permit the operation of a youth bus.

23 (b) Applicants for a certificate to drive a youth bus shall present
24 evidence that they have successfully completed a driver training
25 course administered by or at the direction of their employer
26 consisting of a minimum of 10 hours of classroom instruction
27 covering applicable laws and regulations and defensive driving
28 practices and a minimum of 10 hours of behind-the-wheel training
29 in a vehicle to be used as a youth bus. Applicants seeking to renew
30 a certificate to drive a youth bus shall present evidence that they
31 have received two hours of refresher training during each 12
32 months of driver certificate validity.

33 (c) The driver certificate shall be issued only to applicants
34 qualified by examinations prescribed by the Department of Motor
35 Vehicles and the Department of the California Highway Patrol,
36 and upon payment of a fee of twenty-five dollars (\$25) for an
37 original certificate and twelve dollars (\$12) for the renewal of that
38 certificate to the Department of the California Highway Patrol.
39 The examinations shall be conducted by the Department of the
40 California Highway Patrol. The Department of Motor Vehicles

1 may deny, suspend, or revoke a certificate valid for driving a youth
2 bus for the causes specified in this code or in regulations adopted
3 pursuant to this code.

4 (d) An operator of a youth bus shall, at all times when operating
5 a youth bus, do all of the following:

6 (1) Use seat belts.

7 (2) Refrain from smoking, including electronic cigarettes.

8 (3) Report any accidents reportable under Section 16000 to the
9 Department of the California Highway Patrol.

10 (e) A person holding a valid certificate to permit the operation
11 of a youth bus, issued prior to January 1, 1991, shall not be required
12 to reapply for a certificate to satisfy any additional requirements
13 imposed by the act adding this subdivision until the certificate he
14 or she holds expires or is canceled or revoked.

15 ~~SEC. 19.~~

16 *SEC. 16.* No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.